

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**



**ORIGINAL**

**74-1750**

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**United States Court of Appeals**

**For the Second Circuit.**

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**Docket Nos. 74-1750 and 74-1831**

**SECURITIES AND EXCHANGE COMMISSION,**  
**Plaintiff-Appellee,**

**-against-**

**NORTH AMERICAN RESEARCH AND DEVELOPMENT  
CORP., EDWARD WHITE and ALFRED BLUMBERG,**  
**Defendants-Appellants.**

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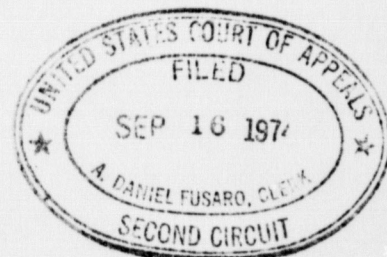
*On Appeal From The United States District Court  
For The Southern District Of New York*

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**BRIEF FOR APPELLANT ALFRED BLUMBERG**

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**ALFRED BLUMBERG, Pro Se**  
**1 University Place**  
**New York, N.Y.**  
**242-8070**



## BRIEF FOR APPELLANT BLUMBERG

The defendant, Alfred Blumberg would like to appeal the decision of Judge Edward Weinfeld, dated March 8, 1974. This appeal is taken in the belief that Judge Weinfeld has made substantial errors both of Law and Fact.

This defendant believes that he was deprived of a trial, and the rights connected with such trial, by the imposition of Rule 65 (a)(2), as used in the Court of Judge Weinfeld. In addition, this defendant assumes from facts gathered and investigated that it was impossible for Judge Weinfeld to have read the voluminous transcript and exhibits, and have reached conclusions of fact and law, especially when exhibits were found to be not in the files of the district court, but some of the Plaintiffs exhibits were in the file cabinet of the attorney, Mr. Roger Deitz, and therefore Judge Weinfeld never laid eyes on them. In addition, I state that the record of the transcript before Judge Mansfield contained testimony of witnesses that was either false, misleading, or otherwise inaccurate. These witnesses at later times either corrected, changed or were disproved in other testimony before the Securities and Exchange Commission. If this be a fact, and I so point out in my testimony before Judge Weinfeld, with no rebuttal by the SEC. In the decision, Judge Weinfeld ignored the fact pattern as I testified under oath. He assumed by mistake, such matters as what I did during the period in question, and confused the facts with other events and then set upon to justify the errors. I was not a stockbroker, and the President of an inactive broker-dealer during the period of June and July 1967; The fact is I was a customer of the broker, Dunhill Securities, and I paid a commission on each purchase and sale just like everyone else. In addition, I did not introduce Mr. Cooper, et al to Dunhill Securities, since he had done business with them in March 1967 without my introduction, and without any knowledge on my part. This defendant denies,



and the record does not show that I was responsible, nor had knowledge of any transactions prior to their occurrence on the part of Cooper, et al and Dunhill. The remarks of Judge Weinfeld that the facts and circumstances surrounding my activities warrant a finding that I was instrumental in linking Dunhill with its Canadian sources of supply of Nard securities are untrue, unfounded and never testified to.

I knew that I have been fighting great odds in this case, due to the fact that a strong prima facie case had been shown against most of the defendants, and the fact that not only had Judge Mansfield issued a lengthy decision, but the Court of Appeals had likewise. It is difficult for any member of the Court to go against two previous decisions, but this leaves this defendant in a position that is also unfair. The right of a trial is something which cannot be avoided, and this defendant although he had participated in the Mansfield Hearing, did not as suggested have the right to cross examine at length a witness, and because the Use of Rule 65 had been denied, Plaintiff and Defendant alike assumed that at a future date, a full trial with rules of evidence would be held. If Deitz before Mansfield in July 1970 assumed this fact, it was also assumed by this defendant and his counsel. If Deitz told Mansfield he would present witnesses at the trial, why should this defendant have presented them before Mansfield. As this defendant understands the question, a preliminary injunction is used, though the facts have not entirely been aired. It is a protective instrument of the Court, and a bridge until the facts are finally heard in due course. Six years, after the fact is certainly due course and has given all ample opportunity to prepare the case. If the SEC wanted to rest on the record, then why a delay of six years. They have all the facts that I mention during the Weinfeld Trial, and they did not challenge my fact pattern, therefore why did Judge Weinfeld ignore it. It is my feeling

that Judge Weinfeld read the decision of Mansfield, and the Court of Appeal, and extracted from each, and concluded. If Judge Weinfeld had available to him the transcript before him of his trial in this matter, he would have seen a fact pattern as I established, without objection on the part of the SEC. The facts were clear, and they were true. We are still allowed Free Speech in this Country, and to say Hello is something we have been taught from childhood. To listen is a sign of respect, it noway concludes an agreement, nor represents action. By my listening to White, at a chance meeting in a restaurant, and in the steamroom, did not join me with his mind, or make me a partner in his actions. Indeed, it should be understood to imply caution on my part. The fact is that I had never been involved in any business transaction with Mr. White. When a friend asks you to read a report, written by a leader in this field of Coal Utilization, I read it out of former and current interest in the subject. It should be noted that no mention of any security had been discussed in any form. No proposal was made to me by Mr. White, that I should take any action whatsoever, and the only question he poised to me ~~was~~ what I concluded after reading the Lummus Report. So far I am sure there was no intent to violate the Law, nor was there a violation of Law.

Yes, I purchased for accounts NARD, and this occurred after the stock was listed for trading in the National Quotation's Pink Sheets. My reliance upon that listing, and the reliance upon the purchasers of 22,000 shares, not named as a defendant in this action should be credited. My actions as a customer should be credited, not the belief that I was the President of an inactive Broker dealer, who became effective August 25th, 1967, after the period in question.



I don't deny that I had spoken to friends and associates in matters dealing with North American, but I deny that I touted them. One does not tout his mother, his lawyer, his banker, his accountant, and other dear friends of long standing. One does not knowingly buy securities that are unregistered, as they are generally viewed as worthless; but when one goes through a broker, who buys them from another broker they should not be unregistered. My actions as a customer, not as a broker should be credited, and if there was a defect in those shares purchased, the obligation falls on the broker to correct, not the customer. To examine a security, and find it to be in the name of a member of the New York Stock Exchange should be prima facie that it was a properly deliverable security. Prior to Nard, I was in the securities industry for over 10 years, and I never knowingly violated the Law. During the Past 7 years, since NARD I have not violated the Law. What would conclude that I knowingly violated the Law with regard to NARD. Judge Weinfeld states that my motivation for touting Nard was to keep that continuity of my clientele. I deny that in its fullest, I didn't have to tout anything, as I was not being paid, either thru my customers purchases, nor by anyone involved in NARD. I spoke to those persons previously mentioned regularly, and in the course of conversation various securities would be mentioned. NARD was just another instance, with no particular motivation, except the concept, the patent that had been issued, the picker testing plant that had been built, and the need to find low sulphur fuels at reasonable costs. Nard was an opportunity, just as many other situations were. Some succeed, while others failed.

If it be a violation of Law, to have requested information, and to give it to professionals who requested it from me, then I am guilty.

I deny that I used the Progress Report, to sell anybody. The testimony is mine alone that I received five copies of the report, and mine alone that I gave three copies to professionals for their due Diligence file. This in no way shows that I used this report to introduce, or to create, or to sell one living person, one share of Nard.

Lets examine the persons who Judge Weinfeld relies upon. Joseph Corby, Vice President of Allen & Co., a man 30 years plus in the business, at July 1967. A friend, who had luncheon at least once a week, an active trader, and a big man in the Securities Industry. Corby tells a story on the stand before Judge Mansfield, and then he changes that story before the SEC, yet not one word of this at the Trial before Judge Weinfeld, as the SEC wants to rest on the record.

Solomon Schneider, the manager of a Country Club, soon to be in the restaurant business and needs a few more dollars. He aided me with a party, and I gave him the lowest price shares that I had purchased. I hand carried him as the stock went up. When it had doubled, I suggested that he sell NARD, and he decided that He would stay with NARD a little longer. Greed on his part was the motive I guess, but I suggested that he sell, not stopping him as suggested. The nonsense of General Electric was corrected in his testimony before the SEC, but they never informed Judge Weinfeld, although I did without it being credited.

Murray Cousins, the manager of a dry cleaning store, opposite where I resided. In conversation, started by Cousins, NARD was discussed amongst other subjects and I left my suits, and Murray Cousins. Upon my return to pick them up, he told me that he had purchased NARD through Edwards and Hanley, Members of the New York Stock Exchange. This being his regular broker, and I had never done business with him, nor discussed the possibility. He asked me for a late quote, and I told him. End of story, until the stock was suspended



and he calls my mother, tells her that her son was everything under the SUN, and then writes a letter to the SEC. He doesn't mention E&H, just Blumberg and the SEC prepares a statement that he signs. He is then coached upon by the SEC, and with the hole in his sweater, prepares his ~~exam~~ carefully rehearsed scene before Judge Mansfield. I guess I got credited over Cousins by Judge Mansfield.

Judge Weinfeld saw this demeanor, through the cold type of a six year old transcript, along with my demeanor which he takes time to describe. To the SEC who desired to rest on the transcript, at the late date of May, 1978 I charge has abused the Court by its actions. It is unnecessary to show how they take a case through the courts, how they chose the time and place of each battle, when challenged they get upset, because you don't consent, and if you fight you get treatment that no other case has to fight. I must prove that I didn't violate any law, and yet they have to present a Prima Faci Case that I did. They have confused the fact pattern to make this case, and then they want you to disprove each and every misstatement. All I want to do is stand on my right that I am innocent until proven otherwise, that I should be given the right to a Trial, not a hearing, and that I be given the right to examine a witness, not a pile of paper. I expect from the Court an open mind, not having read the decision of two Courts, and then overlooking each and every statement of fact that I made, without objection by the Plaintiff. I contend that I have been denied a fair Trial in the Court of Judge Weinfeld, and the decision to use Rule 65 over the heated objections of the Defendants is and was a violation of my right to a Trial. In addition, the fact that the Weinfeld decision is full of a wrong fact pattern, and wrong conclusions, therefore the wrong decision was entered upon this defendant, and I request the Court to remand the decision, and request a new trial before a Judge that will give me the consideration, denied to me by Judge Weinfeld.



If, as by the letter I received from Judge Weinfeld, in answer to my request as to where the exhibits were to be found, then I am sorry for having to point out to this Court that the exhibits were not found in the District Court, and therefore Judge Weinfeld had no right to review an incomplete transcript under Rule 65 (a)(2). In addition, the statement made to me that I would find the exhibits in the Court Of Appeals, when in fact the Court of Appeals had sent the file to the ~~Nat~~ Federal Archives, 641 Washington St, New York City during November, 1972 and they have resided in a Barrel on the Third Floor until my examination during April, 1974 after the decision of Judge Weinfeld. If this not be enough for the Court, then I respectfully refer you to the fact that in answer to my letter to Roger Deitz, Attorney for the SEC in this matter, requesting aid in finding the exhibits, he informed me and showed me during April, 1974 several Plaintiff's exhibits which were in his possession throughout the Trial, before Judge Weinfeld, the interim period through the Weinfeld decision, and that period thru to my letter to Deitz. The question of how one established a Prima Faci case in the absence of these exhibits is raised, and more importantly how the SEC proved its case against this defendant. The lack of these exhibits, could along with the fact that none of the defendants exhibits were reviewed by Judge Weinfeld, leads one to the conclusion that in large measure, Judge Weinfeld relied upon the previous decisions for fact, and drew conclusions. This I submit is inconsistent with Rule 65, and against the rights of this defendant to a full Trial on the facts and merits so presented. Since there has been given the impression that in arriving at the decision, in favor of the Plaintiff, that voluminous transcript and the presumption that the exhibits were part of that transcript were read I fail to see how this was accomplished in light of the facts that I present to this Court.

With the permission of the Court, I would like to comment on several features of the Weinfeld Decision which I take personal exception to. Judge Weinfeld makes an observation about the demeanor of this defendant, where he states that we were quick and glib, and nonresponsive. Instinct recall of events during a six year period is a very difficult feat. This defendant resents the implication that his answers were not to the liking of the Judge, but they were truthful, and with regard to the demeanor of this defendant before Judge Mansfield, I doubt based upon his initial decision if this defendant were anything but truthful in that instance.

On the part of this defendant, I have attempted to show that I did not violate the Law, the record showed not one instance where I have violated the Law in my conduct during the 10 years prior to NARD, and the almost 7 years after the questioned matter before this Court. I suggest that this shows a person who believes in the Law, and attempts to follow it to the letter. I see no reason to lie prostrate before any Judge, and beg understanding and forgiveness. In my statements to the Court, Both oral and written I have expressed concern, understanding and regard. All I want is a fair trial, with the rights accorded to me, and not to be stripped bare by a Judge placed in a position of weighing the evidence presented before him. It seems unfair that I should have what is referred to as a trial, but have the conclusions drawn from decisions previously rendered. I would like to point out to the Court that in the Appeal to the Court of Appeals, I took no position as Judge Mansfield had denied as to me, the preliminary injunction.

Although represented by counsel, at the remand hearing, the decision of all parties to stand on the record was based upon the understanding that some day in the future there would be a TRIAL. If this was the wrong impression, then Plaintiff and Defendant alike are equal in its understanding,



and the decision of Justice Motley confirmed.

With the permission of the Court I would like to inform you that the transcript of the Trial before Judge Weinfeld was not in the District Court Record, and was not submitted to the Court of Appeals in the transfer of the record of this case. Having represented myself, Pro Se, I have not seen the transcript as part of the record that I have reviewed.

I must also inform this Court that I was and am upset by the inclusion of the relief granted by Judge Weinfeld, as to any other securities, and I feel that under the circumstance that I have never had any previous violations, and no subsequent violations of Law, the necessity for this type of action is unnecessary, and I believe beyond the scope of the Law. In no other area of the Law is the defendant guilty unless he proves himself innocent, and then is he prejudged for any act he might do in the future. If the Law were meant to be written in this fashion, then I guess the lawmakers should review this action, and rewrite the law. Law made by consent is not exactly the way laws are conceived in the United States Of America.

Having lived through Seven Years of this matter, I need not burden you with the burden that I have carried, but I feel that the fight is justified and thank GOD that I have the right. The right to have appealed this action to this, the COURT OF APPEALS.

Respectfully submitted

ALFRED BLUMBERG, pro se

STATE OF NEW YORK )  
: SE.  
COUNTY OF RICHMOND )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 16 day of Sept. 1974 deponent served the within *Brief* upon *William D. Moran*

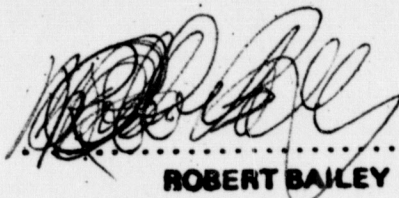
attorney(s) for

*appellee*

in this action, at

*26 Federal Plaza + 540 Madison Ave*  
*N.Y.C.*

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
ROBERT BAILEY

Sworn to before me, this

16 day of Sept, 1974

*William Bailey*

WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1976